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order of the State Corporation Commission, and appeals. Affirmed.

*Harold S. Bloomberg*, of Richmond, for appellant.

*John Garland Pollard*, *Atty. Gen.*, for the Commonwealth

HANSEL *v.* COMMONWEALTH.

March 23, 1916.

[88 S. E. 166.]

**1. Forgery (§ 38\*)—Prosecution—Evidence.**—In a prosecution for forging an option contract for the sale of coal lands and attempting to employ it as with intent to defraud, a contract between accused and R., who effected a sale of the land under the forged document, for division of the commissions claimed is admissible in evidence, where its identity was established by the attorney who drew it.

[Ed. Note.—For other cases, see Forgery, Cent. Dig. § 108; Dec. Dig. § 38.\* 6 Va.-W. Va. Enc. Dig. 249.]

**2. Forgery (§ 37\*)—Prosecution—Evidence.**—In such case, where accused's associate R. sued to recover commissions claimed under the forged contract and accused testified in his behalf, the agreement between them to share commissions is material.

[Ed. Note.—For other cases, see Forgery, Cent. Dig. §§ 105-107, 111; Dec. Dig. § 37.\* 6 Va.-W. Va. Enc. Dig. 250.]

**3. Criminal Law (§ 1036 (7)\*)—Appeal—Presentation of Grounds of Review Below—Necessity.**—In a prosecution for forgery of a contract used in a civil suit in which accused was active, accused should, the trial court having ruled that his evidence given in the civil suit was receivable, have clearly objected to the authenticity of the stenographic report of his testimony if he desired to raise that issue on appeal.

[Ed. Note.—For other cases, see Criminal Law, Dec. Dig. § 1036 (7).\* 1 Va.-W. Va. Enc. Dig. 557.]

**4. Criminal Law (§ 539 (2)\*)—Evidence—Admissibility.**—Where accused and another forged and attempted to employ a forged option contract for the sale of lands under an agreement for accused to share in the recovery of commissions claimed by his confederate, and in an action on such contract accused testified in support of the contract, his testimony so given being in his own behalf, is admissible in a prosecution for the forgery, notwithstanding Code, § 3901, providing that in a prosecution other than for perjury, evidence shall not be given against accused of any statement made by him as a witness upon a legal examination, unless such statement was made when examined in his own behalf.

[Ed. Note.—For other cases, see Criminal Law, Cent. Dig. § 1230; Dec. Dig. § 539. (2).\* 4 Va.-W. Va. Enc. Dig. 82.]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

**5. Forgery (§ 48\*)—Prosecution—Instructions.**—In a prosecution for forging an option contract and attempting to use it to defraud, accused requested an instruction that before he could be convicted of uttering or attempting to employ as true the writing in controversy, the jury must find that it was a forgery, that he knew it was a forgery and that he was to share any recovery with the person named in the forged contract. The court struck out the third provision. Held, that the instruction as modified was erroneous, for it permitted a conviction without any proof that accused forged or assisted in using the forged instrument.

[Ed. Note.—For other cases, see Forgery, Cent. Dig. §§ 124-128; Dec. Dig. § 48.\* 7 Va.-W. Va. Enc. Dig. 714.]

**6. Criminal Law (§ 1158 (1)\*)—Appeal—Questions for Review.**—Where a conviction must be reversed for error in instructions, the appellate court will not review the weight of the evidence.

[Ed. Note.—For other cases, see Criminal Law, Cent. Dig. §§ 3070, 3071, 3074; Dec. Dig. § 1158 (1).\* 1 Va.-W. Va. Enc. Dig. 619.]

Error to Circuit Court, Russell County.

R. S. Hansel was convicted of forgery, and with uttering and attempting to employ a forged instrument with intent to defraud, and he brings error. Reversed and remanded.

C. S. McNulty, of Roanoke, and *Finney & Wilson*, of Lebanon, for plaintiff in error.

*The Attorney General*, for the Commonwealth.

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## HOTEL RICHMOND CORP. et al. v. COMMONWEALTH.

March 16, 1916.

[88 S. E. 173.]

**1. Licenses (§ 8 (2)\*)—"Hotel"—Refunding of Taxes.**—Code 1904, pp. 2253, 2258, define a hotel as the place maintained by any person who for compensation furnishes lodging, diet, and entertainment for travelers, sojourners, guests, or boarders in his house, and shall also sell by retail wine, spirituous, or malt liquors, or any mixture of them, and the same section also imposed a graduated license tax on hotels. The Byrd Liquor Law 1908 (Laws 1908, c. 189) imposed a license tax for the sale of liquors, but repealed the earlier act, so that no tax was then imposed on hotels. The commissioner of revenue attempted to assess certain hotels with a license tax under Revenue Law 1902-04 (Laws 1902-04, c. 148, §§ 95, 96, 97; Code 1904, p. 2239), providing for the taxing of houses of private entertainment. After such attempted assessment, the Legislature passed a new act purporting to assess a license tax on hotels. Held, that the tax col-

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.